

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

आ.अपी.सं / **ITA Nos.467 and 468/Hyd/2023**
(निर्धारण वर्ष / Assessment Years: 2016-17 and 2019-20)

Arif Mohammad, H.No.3-100/1, Gudeppadu Village, Athmakur Mandal, Warangal, Telangana. PAN : AWBPM6096M.	Vs.	ACIT, Central Circle 2(4), Hyderabad.
अपीलार्थी / Assessee		प्रत्यर्थी / Respondent

निर्धारित द्वारा/Assessee by: Shri A.V. Raghuram,
Advocate.

राजस्व द्वारा/Revenue by: Shri Shakeer Ahamed, Sr.AR

सुनवाई की तारीख/Date of hearing: 22.11.2023

घोषणा की तारीख/Pronouncement on: 29.11.2023

ORDER

SRI LALIET KUMAR, JM:

The captioned appeals are filed by the assessee feeling aggrieved by the separate orders of Commissioner of Income Tax (Appeals) – 12, dt.08.08.2023 invoking proceedings under sections 153C of the Income Tax Act, 1961 (in short, “the Act”) for A.Y. 2016-17 and 2019-20.

2. The grounds raised by the assessee in ITA No.467/Hyd/2023 for A.Y. 2016-17 reads as under :

“1. On the facts and in the circumstances of the case, the order passed by the ld.CIT(A) is erroneous and unsustainable on facts and in law.

2. The ld.CIT(A) erred in confirming the addition of Rs.21,00,000/- made by the Assessing Officer u/s 69A of the Act. The authorities below failed to appreciate that as the agreement of sale did not materialize, the same was destroyed and therefore, the appellant could not file the same before the authorities below.

3. The ld.CIT(A) failed to appreciate that the appellant has discharged his onus by explaining the source for the deposit in the bank and by filing confirmation letter from the said buyer.”

3. The grounds raised by the assessee in ITA No.468/Hyd/2023 for A.Y. 2019-20 reads as under :

“1. On the facts and in the circumstances of the case, the order passed by the ld.CIT(A) is erroneous and unsustainable on facts and in law.

2. The ld.CIT(A) erred in confirming the addition of Rs.25,00,000/- made by the Assessing Officer u/s 69A of the Act. The authorities below failed to appreciate that the sources for the deposit is from the earlier withdrawals made in F.Y. 2016-17.”

4. As the facts and issues in both the appeals are the same, except the amounts involved, we are reproducing the facts of appeal in ITA No.467/Hyd/2023 for the sake of brevity.

5. The brief facts of the case are that the assessee filed his return of income on 08-11-2016 admitting a total income of Rs.2,93,300/-. In this case, information was received from Police Authorities, Sironcha Police Station, District Gadchiroli that cash of Rs.1,20,00,000/- was found in the possession of Sri Sanjay Gangaram Awathare along with his driver on 02-06-2020 and he was not having any supporting documents to establish the source of the cash. He further stated that the cash being carried in the vehicle was belongs to Mr.Mohd.Bashu Miya for making payment

to Tendu Patta gatherers in the contract area of Bhamragarh, Gadchiroli for various Gram Sabhas and their villages. Hence, a warrant of authorization u/s.132A was executed on the said Bashu Miya Mohd.

5.1. Subsequently, the case of the assessee was notified to the Assessing Officer and the proceedings u/s.153C of the I.T.Act, 1961 were initiated in the case of the assessee for the A.Ys.2015-16 to 2020-21 and notice u/s 143(3) for the A.Y.2021-22 was given as the requisitioned money belongs to the assessee. Accordingly, a notice u/s.153C was issued to the assessee on 08-12-2021 and in response to the same, the assessee filed a return of income on 05-02-2022 admitting a total income of Rs.2,93,300/-. Subsequently, notice u/s.143(2) dated 21-02-2022 was issued to the assessee.

5.2. In response to the notice u/s.143(2) and subsequent statutory notices, the assessee uploaded the information on various dates stating that cash deposit of Rs.21,00,000/- are the receipts against the agreement entered by him for the sale of Immovable property during the F.Y 2015-16 and thereafter, as the sale was not materialized, he has withdrawn the amount of Rs.21,00,000/- on 28-05-2015 and repaid to the buyer. However, the assessee has not furnished any documentary evidence in support of his contention that the amount of cash deposit was received on account of agreement of sale. In the absence of any supporting evidence with regard to cash deposits of Rs.21,00,000/-, Assessing Officer treated the same as unexplained u/s.69A of the Act and therefore, taxed under the provisions of Sec.115BBE of the Act. Thus, the Assessing Officer completed the assessment and passed order u/s 153C of the Act dt.28.03.2022.

6. Feeling aggrieved with the orders passed by the assessing officer, assessee filed the captioned appeals before the ld.CIT(A), who dismissed the first appeal and partly allowed the second appeal of assessee.

6.1 Aggrieved with the orders of ld.CIT(A), assessee is now in appeal before us.

7. Before us, ld. AR has submitted that the order passed by the authorities are without any basis and for the above said purposes, he has drawn our attention to the order passed by the Assessing Officer and our attention was drawn to para 4.1 of the assessment order, which is to the following effect :

“4.1 The assessee vide his letter dated 07-03-2022, submitted that the cash deposit of Rs.21,00,000/- are the receipts against the agreement entered by him for the sale of Immovable property during the FY 2015-16. He further submitted that as the agreement of sale was cancelled, the amount has to be repaid and Rs.21,00,000/- was withdrawn on 28-05-2015 and repaid to the buyer. However, the assessee has not furnished any documentary evidence ,in support of his contention that the amount of cash deposit was received on account of agreement of sale. In the absence of any explanation or information with regard to cash deposits of Rs.21,00,000/-, it is treated that the assessee has no evidence to prove the genuineness and creditworthiness of the transactions. In view of the above, the entire cash deposits of Rs.21,00,000/- is treated as unexplained and assessed u/s.69A of the Act and therefore, taxed under the provisions of Sec.115BBE of the Act.”

7.1 Ld. AR further submitted that before the ld.CIT(A), assessee filed additional documents and evidence and on those evidence, the ld.CIT(A) had sought remand report from the Assessing Officer and the Assessing Officer within two days has filed the remand report. Considering the remand report, the ld.CIT(A) has confirmed Rs.21 lakhs in the hands of the assessee. The ld. AR has submitted that quick action taken by the Assessing

Officer in filing the remand report is against the principles of natural justice as the Assessing Officer has not examined the facts of the case and the evidence and even the Id.CIT(A) blindly followed the remand report filed by the Assessing Officer and decided the case and for the above said purposes, he has drawn our attention to para 6 of the order of Id.CIT(A) at pages 7 to 10.

“6. **Decision:** *I have gone through the grounds of appeals, statement of facts, assessment order and the submissions made by the appellant. The only issue involved in the present appeal is addition of Rs.21,00,000/- u/s 69A of the Act on account of cash deposited in the bank account during AY 2016-17.*

The facts of the case are that cash of Rs.1,20,00,000/- was found in the possession of the Sri Sanjay Gangaram Awathare on 02.06.2020 by Police Authorities and Sri Sanjay Gangaram Awathare was not having any supporting documents to establish the sources of cash. In statement recorded u/s 132(4) of the Act, Sri Sanjay Gangaram Awathare stated that he was working for Mr. Mohd Bashu Miya, who is a Tendu Patta Contractor and the cash being carried in the vehicle belonged to Mr. Mohd. Bashu. Miya for making payment to Tendu Patta gatherers in the contract area of Bhamragarh, Gadchiroli, Maharashtra. Sri Sanjay Gangaram. Awathare further, has stated that out of cash of Rs.1.20 crores, an amount of Rs.9,00,000/- was withdrawn by the appellant from his bank account in Warangal Urban Cooperative Bank Ltd. Since Sri Sanjay Gangaram Awathare and Mr. Mohd Bashu Miya could not furnish the sources of cash found, a warrant of authorization u/s 132A was executed on Sri Sanjay Gangaram Awathare and Mr. Mohd Bashu Miya on 26.06.2020 and the cash of Rs.1.20 crores was requisitioned.

Subsequently, the case of the appellant was selected for scrutiny for the AYs 2015-16 to 2021-22 and notices u/s 1530 85 142(1) of the Act were issued to the appellant. In response to the notice u/s 153C, the appellant has filed the return of income for the AY 2016-17 on 05.02.2022 admitting a total income of Rs.2,93,300/- and has submitted the required information. During the course of assessment proceedings, on verification of the bank account statements obtained from the bank authorities u/s 133(6) of the Act, the Assessing Officer noted that there were cash deposits to the tune of Rs.21,00,000/- in FY 2015-16 in the Indian bank account no.6193097665 of the appellant. The appellant was asked to explain the nature and sources of the cash deposits. In response, the appellant submitted that the cash deposits of Rs.21,00,000/- are the receipts against the agreement entered by him for the sale of immovable property during the FY 2015-16. The appellant further submitted that the agreement got cancelled and the amount of Rs.21,00,000/- was repaid to the buyer. However, the Assessing Officer observed that the appellant has not furnished any documentary evidence in support of his contention that the amount of cash deposit was received on account of

agreement of sale, Accordingly, in absence of documentary evidences, the Assessing Officer has treated cash deposits of Rs.21,00,000/- as unexplained money u / s 69.k of the Act and added to the total income of the appellant for the current year under consideration.

During the course of appeal proceedings, the appellant has submitted confirmation from a person named Sri Kasani Vishnu Murthy dated 08.02.2023 regarding payment of Rs.21,00,000/- as additional evidence, which was forwarded to the Assessing Officer for remand proceedings. The Assessing Officer has commented in the remand report. as -under:.

Now the assessee filed a confirmation letter from, a person named Sri Kasani Vishnu Murthy and claiming that the amount has been received as an advance against the sale of immovable property- and later on since the agreement got cancelled returned the said amount. He further mentioned that the agreement in. question was destroyed as the same got cancelled. On verification of the confirmation filed by the assessee, it is observed that it only got signature of Sri Kasani Vishnu Murthy. The confirmation got neither the Aadhar No. nor PAN. It is also pertinent to mention here that the amount being Rs.2.1,00,000/ -, the sources for the said amount have to be explained by the .so called Sri Kasarri Vishnu Murthy, Since these details are not mentioned in the confirmation letter, the same does not deserve any consideration. Accordingly, the claim of the assessee may summarily be rejected and the addition made be sustained."

In the remand report, the Assessing Officer has requested to sustain the addition of Rs.21,00,000/- since the appellant has not produced the copy of agreement of, sale,. Aadhar number & PAN of Sri Kasani Vishnu Murthy. Further, in reply to the remand report, the appellant has furnished the Aadhar number of the appellant.

I have considered the submissions of the appellant, assessment order and the remand report of the Assessing Officer. The Assessing Officer, made the addition of Rs.21,00,000/- u/s 69A of the Act on account of cash deposits made in the bank account during FY 2015-16, as the appellant has failed to produce any documentary evidences in support of the said cash deposits. With regard to this addition, the following observations are made:

(i).. The appellant has not produced agreement for sale either during assessment proceedings or during appeal proceedings, which is the basis of the appellant's claim of receipt of cash of Rs.21,00,000/- from Sri Kasani Vishnu Murthy. During appeal proceedings, the appellant has produced confirmation from Sri Kasani Vishnu Murthy, however, it is seen that mere confirmation from any party without proving genuineness of the transaction with documentary evidences cannot be regarded as conclusive proof. Therefore, in absence of the said agreement of sale, the claim of the appellant that the cash was received on; account of agreement of sale, cannot be verified and appears an afterthought.

(ii). The appellant- has not furnished the PAN and bank account statement for the FY 20.15-16 of Sri Kasani Vishnu Murthy to show that the source of said Rs.21,00,000/- is out of cash withdrawals front his bank account.

(iii). The income of the appellant for the year as per return filed on 05.02.2022 is Rs.2,93,300/- and the cash deposits in bank account of, the appellant amount to Rs.21,00,000/-. The prima fade examination without any documentary evidences itself will lead to a conclusion that the unaccounted income of the appellant has been deposited in cash in the bank account.”

8. Per contra, the ld. DR has drawn our attention to the paper book filed by the assessee and our attention was drawn to English translation of confirmation letter in favour of the assessee to show that the transaction between the assessee and one Kasani Vishnumurthy was not materialized and hence, he has received back an amount of Rs.21 lakhs from the assessee and thereby cancelled the agreement. The English translation of the said confirmation reads as under : (Volume 1 of the paper book).

“English Translation of the Confirmation Letter

I, Kasani Vishnumurthy, S/o. Sammaiah, R/o. Gorreykunta, Warangal District with an intension to purchase agricultural property have given an amount of Rs.21,00,000 (Rupees Twenty one lakhs only) in April, 2015 to Mohammed Arif, S/o. Mohammed Pasha, R/o. Gudeppad, Atmakur Mandal, Warangal District and his family members. Since, the transaction has not materialized I have received back an amount of Rs.21,00,000 (Rupees Twenty one lakhs only) and have cancelled the agreement.

Date:08.02.2023

Place: Warangal

*Sd/-
Kasani Vishnumurthy
S/ o. Sammaiah”*

9. Ld. DR further submitted that from the perusal of the confirmation letter it is clear that the assessee has not given the address of the person issuing confirmation letter, nor has mentioned the size of the land for which the agreement was entered, nor the description of the property and nor the date of transaction was given. This evidence was given for the first time

before the Id.CIT(A) and this evidence is incomplete and cannot be considered. The submission of the assessee cannot be considered as the same was not plausible and no evidence has been shown to us by the assessee in this regard.

10. We have heard the rival submissions and perused the material on record. Admittedly, as per the case of the Assessing Officer, one Sanjay Gangaram Awathare had stated that he was working for Mr. Mohd. Bashu Miya was carrying the cash in the vehicle belonging to the said Mohd. Bashu Miya assessee for making the payment to Tendu Patta gatherers in the contract area of Bhamragarh, Gadchiroli for various Gram Sabhas and their villages. The amount of Rs.1.20 lakhs was found in possession of the assessee. Thereafter, the case was transferred to Central Circle and notices were issued to assessee and the assessee filed return of income and on examination of the bank account of the assessee, it was found that the assessee had deposited Rs.21 lakhs in his bank account namely, Indian Bank. The assessee was called upon to explain the sources of deposit in his bank account and in response thereto, the assessee submitted that he received the said amount on cancellation of the agreement of sale made by him with one Kasani Vishnumurthy for the sale of immovable property during the F.Y. 2015-16 and the same was deposited in his bank account.

11. Before the Assessing Officer, the assessee failed to give the details of the name of the person and details of the schedule property and in the absence of any information, the Assessing Officer has made the addition. Thereafter, the assessee has mentioned hereinabove that even at the appellate stage also, Id.CIT(A) blindly followed the remand report of the Assessing Officer and dismissed the appeal of the assessee. We have

examined the evidence filed by the assessee before us. In our opinion, the evidence filed by the assessee does not inspire any confidence and in the evidence filed by the assessee, so many fundamental facts are missing like the details of the property for which he has entered into the agreement, details of the owner of the property for which agreement was made and he has not even mentioned the date on which the agreement was entered. Further, the assessee has also not given the details when the said agreement was cancelled.

12. In the light of the above, we can safely conclude that the assessee was unable to establish his case that the amount in question was received on account of cancellation of the agreement in cash from some persons. In our view, the plea of the assessee is not required to be accepted and at the same time, it is contrary to law and there is no evidence available on record which shows the land was either owned by the assessee or by any other person and there is also no agreement for sale entered between two persons and subsequently there was cancellation of said agreement showing the returning of the amount. Due to lack of all these evidence, it is not possible to believe the explanation given by the assessee before the Id.CIT(A) as well as before us. In the light of the above, the assessee failed to discharge onus of proving the genuineness, creditworthiness and sources of said cash deposit in his bank account and hence, we do not find any merit in the appeal of the assessee and accordingly, the appeal of the assessee is dismissed.

13. In the result, the appeal of assessee in ITA No.467/Hyd/2023 is dismissed.

ITA 468/Hyd/2023

14. As far as the other appeal of assessee i.e., ITA No.468/Hyd/2023 is concerned, ld. AR reiterated the same contentions made for the appeal in ITA No.467/Hyd/2023 and further stated that in this appeal, amount was Rs.27 lakhs which was withdrawn in the F.Y. 2016-17. In this regard, ld. AR has drawn our attention to Para 4.1. of the assessment order, which is to the following effect :

“4.1 The assessee, vide his letter dated 07-03-2022, submitted that the cash deposit of Rs.25,00,000/- on 07-01-2019 are the amounts withdrawn in the financial year 2016-17 and given to family members and the same were shown in the current assets of the balance sheet. He further submitted ,that the cash deposit of Rs.2,00,000/- made on 16-01-2019 is out of the income received during the year. However, the assessee has not furnished any documentary evidence in support of his contention that the amount of cash deposit were the same amounts which were withdrawn during the FY 2016-17. The assessee has also not shown any credible evidence to the effect that the cash deposit of Rs.2,00,000/- was made out of the income earned during the year. In the absence of any explanation or information with regard to total cash deposits of Rs.27,00,000/-, it is treated that the assessee has no evidence to prove the genuineness and creditworthiness of the transactions. In view of the above, the cash deposits of Rs.27,00,000/- is treated as unexplained and assessed u/s.69A of the Act and therefore, taxed under the provisions of Sec.115BBE of the Act.”

14.1. Thereafter, ld. AR has drawn our attention to pages 7 to 9 or the order of ld.CIT(A), wherein the ld.CIT(A) has held as under :

“I have considered the submissions of the appellant, assessment order and the Remand report of the Assessing Officer. The Assessing Officer made the addition of Rs..27,00,000/- u/s 69A of the Act on account of cash deposits made in the bank account during FY 2018-19, as the appellant has failed to produce any documentary evidences in support of the said cash deposits. With regard to this addition, the following observations are made:

(i). *The appellant has not. Produced any 'confirmation froth the family members/ parties regarding receipt. Of cash of Rs.25,00,000/- in the FY 2016-17 & payment of same cash in the current FY 2018-19 and has also not produced respective returns of income & books of accounts filed by them from the Ays 2017-18 to 2019-20, either during assessment proceedings or during appeal proceedings to prove the. Identity & capacity of the parties and genuineness of the transactions. Therefore, in absence of the any confirmation from the parties, respective returns of income & books of accounts, the claim of the appellant that the cash deposited during FY 2018-19 is the same cash that was withdrawn by him in the FY 2016-1.7 and was given to the family members cannot be verified and appears an afterthought.*

(ii). *The income of the appellant for the year as per return filed on 05.02.2022 is Rs.3,19,680/- and the cash deposits in hank account of the appellant amount to Rs.27,00,000/-. The prima facie examination without any documentary evidences itself will lead to a conclusion that the unaccounted income of the appellant has been deposited in cash in the bank account.*

In view of the above observations, the addition of Rs.25,00,000/- is hereby confirmed and accordingly, the grounds no.2 as 4 of the appeal are dismissed.

6.1 With regarding to the remaining cash. Deposits of Rs.2,00,000/-, the Assessing Officer has made the addition stating that no credible evidence was filed to the effect that the cash of Rs.2,00,000/- was deposited out of the income earned during the current year. However, it is seen that during the course of assessment proceedings, the appellant has already furnished bank account statement., books of account and return of income for the current AY 2019-20 showing salary income of Rs.84,000 /- and income from other sources of Rs.2,75,680/- and has claimed that the cash deposited of Rs.2,00,000/- was made from the current year income. In the assessment order, the Assessing Officer has not placed. Anything on record to prove that the cash deposit of Rs.2,00,000/- was not made from the income, declared for the current AY 20.19-20, when it is evident from the return of income and books of accounts that the appellant has declared sufficient income during the current AY 2019-20 to incorporate the cash deposits of Rs.2,00,000/-. Therefore, the appellant is entitled for telescoping the cash deposits to the extent of Rs.2,00,000/- against the declared income of Rs.3,59,680/- during the current AY 2019-20. Accordingly, the addition to the extent, of Rs.2,00,000/- is hereby deleted and ground no.3 of the appeal is allowed.”

15. Per contra, ld. LD. DR supported the orders of lower authorities.

16. We have heard the rival submissions and perused the material on record. In the present case, Assessing Officer treated the cash deposits of Rs.27 lakhs as unexplained u/s 69 of the Act and made addition of the same holding that assessee has not produced any documentary evidence in support of his contention that the amounts of cash deposits were the same amounts which were withdrawn during the FY 2016-17 and has also not shown any credible evidence to the effect that the cash deposit of Rs.2,00,000/- was made out of the income earned during the year. Accordingly, the Assessing Officer treated total 'cash deposits of Rs.27,00,000/- as unexplained money u/s 69A of the Act and added to the total income for the current year under consideration.

17. With respect to cash deposits of Rs.25 lakhs, we found that assessee has not produced any documentary evidence in support of the cash deposit of Rs.25 lakhs showing that he has taken the amount for A.Y. 2016-17 from his family members. Even before us also, the assessee has not produced any evidence to prove the source of cash deposit of Rs.25 lakhs by filing any confirmation letters, bank account statements or details of books of account etc. However, the ld. AR had submitted that if an opportunity was given to the assessee, he shall produce the necessary evidence from the family members. In view of the above, we remand back the appeal for A.Y. 2019-0 to the file of ld.CIT(A) with a direction to decide the issue afresh after affording the opportunity of hearing to the assessee. Needless to say, that the assessee shall be permitted to file additional evidence from the family members / others to prove the source of cash. The

ld.CIT(A) shall complete the proceedings after affording the opportunity and following the principles of natural justice.

18. In the result, the appeal of assessee in ITA No.468/Hyd/2023 is allowed for statistical purposes.

19. To sum up, appeal in ITA No.467/Hyd/2023 is dismissed and the appeal in ITA No.468/Hyd/2023 is allowed for statistical purposes. A copy of the same may be placed in the respective case files.

Order pronounced in the Open Court on 29th November, 2023.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 29th November, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	Arif Mohammad, H.No.3-100/1, Gudeppadu Village, Athmakur Mandal, Warangal – 506330, Telangana.
2	The Assistant Commissioner of Income Tax, Circle – 2(4), Hyderabad.
3	Pr.CIT (Central), Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order